

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41054
Docket No. MW-41160
11-3-NRAB-00003-090521**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned outside forces (Caylor and Gentz) to perform Maintenance of Way work (transport Maintenance of Way equipment) from Mile Post 97 and Mile Post 88 to Mile Post 86.50 on the South Morrill Subdivision of the Nebraska Division on July 28, 2008 (System File J-0852U-268/1508969).
- (2) The Agreement was further violated when the Carrier failed to furnish the General Chairman with a proper advance notice of its intent to contract out said work and when it failed to make a good-faith effort to reduce the incidence of contracting out scope covered work and increase the use of its Maintenance of Way forces as required by Rule 52 and the national December 11, 1981 Letter of Agreement.
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimants H. Emmons and T. Benda shall now each be compensated for eight (8) hours at their respective straight time rates of pay.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case is a companion to Third Division Award 41052, which dealt with a nearly identical dispute. The arguments presented by the parties in that case are exactly the same as those set forth in the instant dispute. The only differences between that case and the instant case involve the names of the Claimants, Mile Post location, and claim dates.

For the sake of brevity, the Board will not reiterate the positions of the parties or its reasoning and logic, but instead refers the parties to the prior Award. The Board finds and holds on behalf of the Organization. The Claimants shall be compensated as requested in Part (3) of the claim because there was a showing of lost work opportunities.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of August 2011.